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COMPLIANCE RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2020-5036
January 8, 2020

The Department of Juvenile Justice (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ on whether the grievant’s December 20, 2019 grievance was timely initiated.

FACTS

The grievant received a Group III Written Notice with termination on November 5, 2019. The agency subsequently decided to rescind the grievant’s termination on November 22, and she was reinstated effective November 25. The Group III Written Notice was revised and reissued to reflect that the grievant had not been terminated. Besides the removal of the grievant’s termination, there appear to have be no other changes to the document.² The grievant received the revised Written Notice on December 4. The grievant filed a grievance with the agency on or about December 23, challenging the issuance of the Group III Written Notice.³ On or about December 31, the agency notified the grievant that her grievance had been administratively closed because it was untimely. The grievant now seeks a ruling from EDR to determine whether the grievance was timely filed.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date she knew or should have known of the event or action that is the basis of the grievance.⁴ When an employee initiates a grievance beyond the 30 calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² The date of issuance (November 5, 2019) is also the same on both documents.

³ The grievance is dated December 20, though the time stamp at the agency indicates it was received on December 23. Whether the grievance was initiated on either date, the result of this ruling is unchanged.

⁴ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

administratively closed. EDR has long held that in a grievance challenging a disciplinary action, the 30 calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.⁵ Further, the *Grievance Procedure Manual* states that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of receipt of the Written Notice.”⁶


In this case, the event that forms the basis of the grievance is the agency’s issuance of the Group III Written Notice, which the grievant originally received on November 5, 2019. The grievant later received the revised Written Notice confirming that she had not been terminated on December 4. While an employee’s receipt of a Written Notice marks the beginning of the 30 calendar days in which the disciplinary action may be challenged through a grievance, this case presents a unique procedural issue because there are effectively two dates of receipt: November 5 (the original Written Notice) and December 4 (the revised Written Notice). In support of its position that the grievance is untimely, the agency asserts that the grievant should have filed a grievance challenging the Written Notice within 30 days of her receipt of the original Written Notice, or no later than December 5. The agency further contends that the grievant’s receipt of the revised Written Notice should not alter or extend the 30 calendar-day filing period.

EDR has carefully considered the agency’s arguments and finds them unpersuasive in this case. An agency’s decision to revise and reissue a Written Notice may not always trigger a new 30 calendar-day filing period. Nonetheless, the nature of the revision to the Written Notice here—confirming the grievant’s reinstatement to employment—was sufficiently substantive that a new 30 calendar-day period began when she received the revised Written Notice on December 4. Therefore, EDR concludes that the grievant had until January 3, 2020 to file a timely grievance challenging the Written Notice. The grievant filed her grievance with the agency on or about December 23, within 30 days of her receipt of the revised Written Notice on December 4, and it is therefore timely.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was timely initiated and must be allowed to proceed. This ruling does not address the merits of the claims presented in the grievance and only decides that the grievance was timely filed. The grievance must therefore be returned to the first step-respondent for a substantive response, and then proceed through the remainder of the management resolution steps.

EDR’s rulings on matters of compliance are final and nonappealable.⁷



Christopher M. Grab
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⁵ E.g., EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986.

⁶ *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). Similar language is also listed on the Written Notice form itself.

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).